

ORDINANCE NO. 1935

AN ORDINANCE of the City of Selah, Washington, amending sections of Selah Municipal Code prohibiting the cultivation, production, processing or retail sales of recreational marijuana within the City of Selah.

WHEREAS, prior to 1988 both federal and state law prohibited the production, processing, and dispensing of medical cannabis and both prohibited the use of marijuana for recreational purposes;

WHEREAS, in 1988 then Governor Gary Locke signed into law the Medical Cannabis Act, which provides for the use of medical marijuana by patients with qualifying medical conditions;

WHEREAS, unfortunately the Medical Cannabis Act created inconsistencies with federal law;

WHEREAS, in 2011 the state legislature passed ESSB 5073 in order to clarify issues with the Medical Cannabis Act; that bill authorized medical cannabis dispensaries, and allowed qualifying patients to participate in collective gardens to grow marijuana for medical use. The Bill specifically provided that cities could regulate and license the production, processing, and dispensing of medical marijuana within their local jurisdictions;

WHEREAS, ESSB 5073 also called for the state to regulate medical marijuana. Governor Gregoire at the time, however, vetoed all portions of the bill requiring any state regulatory action. The Governor expressed concern that state employees would be placed into a situation of violating federal law while performing the duties of their jobs;

WHEREAS, although additional legislation has been proposed with respect to medical marijuana, no further legislation has passed addressing these concerns;

WHEREAS, in November 2012 the citizens of the state approved I-502. I-502 legalizes the possession of limited amounts of marijuana by persons 21 years of age or older. I-502 had no effect on the Medical Cannabis Act;

WHEREAS, Under I-502 the Washington State Liquor Control Board (WSLCB) is authorized to license and regulate the cultivation, production, processing and retail sales of recreational marijuana;

WHEREAS, under its rulemaking authority granted under I-502 the WSLCB promulgated rules in the Washington Administrative Code (WACs) applicable to the cultivation, production and retail sales of recreational marijuana;

WHEREAS, the United States Congress previously passed the Comprehensive Drug Abuse and Prevention and Control Act of 1970. The Act created a comprehensive approach to the regulation of controlled substances and enforcement related to drugs. The Act is referred to as the Controlled Substances Act;

WHEREAS, Congress established 5 “schedules” or classifications for drugs. Drugs are placed into certain schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical or psychological consequences of abuse;

WHEREAS, the federal government has classified marijuana as a Schedule I controlled substance. To qualify as a Schedule I controlled substance there had to be a showing and it must be found that:

- (1) The substance has a “high potential for abuse”
- (2) The substance has no currently accepted medical uses for treatment
- (3) And that there is a lack of accepted safety for use of the drug under medical supervision;

WHEREAS, the Controlled Substance Act makes it illegal to knowingly or intentionally “manufacture, distribute, or dispense a controlled substance”;

WHEREAS, the United States Supreme Court had occasion to consider the Controlled Substance Act and its interaction with state laws. The Supreme Court found that under the Commerce Clause of the Constitution, the federal government could properly regulate marijuana as a Schedule I controlled substance and that under the Supremacy Clause, the provisions of the federal Controlled Substances Act prevail over any conflicting state laws. *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005);

WHEREAS, the Washington State Attorney General issued Formal Opinion, AGO 2014 No. 2 finding that cities can regulate marijuana cultivation, production and retail through land use controls and other regulatory means. This includes the ability of cities to ban such within their jurisdictions;

WHEREAS, as part of the regulations that the WSLCB promulgated, the WSLCB specifically provides at WAC 314-55-020(11) that:

The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including but not limited to: building and fire codes, zoning ordinances, and business licensing regulations.

WHEREAS, the Washington State Constitution at Article 11, Section 11 provides general police powers to cities and authorizes cities to adopt land use controls and regulate land within their respective jurisdictions;

WHEREAS the Growth Management Act, RCW 36.70A, specifically empowers cities to develop and adopt land use controls within their jurisdictions;

WHEREAS, public safety officials have indicated that there will be secondary impacts associated with the recreational use, cultivation, production, processing, and sale of marijuana;

WHEREAS, there are documented secondary effects from analogous medical marijuana dispensaries in other cities and counties including the crimes of murder, robbery, burglary, drug dealing, sales to minors, loitering, heavy foot and vehicular traffic, increase noise, odors, and health hazards such as the proliferation of molds; See, “White Paper on Marijuana Dispensaries,” California Police Chiefs Association’s Task Force on Marijuana Dispensaries (April 22, 2009) and City of Riverside v. Inland Empire Patients Health and Welfare Center, 56 Cal. 4th 729, 756 (2103);

WHEREAS, there are impacts that will be visited upon local jurisdictions due to I-502 and those secondary impacts may not yet be fully known; but it is certain that there will be a need for increased public safety efforts and, although, the state provides for a 25% taxation scheme on the production and retail of marijuana, none of that tax money will come to local jurisdictions who are tasked with addressing such impacts locally;

WHEREAS, a significant safety concern is presented because money generated by cultivators, producers, processors, or retailers of marijuana cannot be deposited to federally insured banking institutions (there appears to be a limited ability for cultivators, producers, and processors (not retailers) to make deposits into currently one banking institution located in Spokane;

WHEREAS, large sums of money that cannot be deposited to banking institutions with appropriate safety and security measures in places presents a concern that armed robbery and/or burglary could take place within the premises of such establishments. This safety concern cannot be disregarded and the City feels a responsibility to its citizenry to ensure that the banking issues are fully resolved prior to considering where, and under what conditions, if any, cultivators, producers, processors, or retailers of marijuana should be permitted within the City;

WHEREAS, the City Council cannot ignore the issues existing between the state law and federal laws (which take precedent over conflicting state laws), including among other concerns the banking concerns identified above;

WHEREAS, medical marijuana as authorized under the Medical Cannabis Act (1988) has not presented a concern of any significance to local jurisdictions since its inception in 1988. It does not appear necessary at this time that any action need be taken with respect to medical marijuana and that collective gardens, providers and medical marijuana users who are in compliance with state law should be permitted to continue to do so without the necessity of any local action to zone or otherwise regulate that activity at this time;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON DOES ORDAIN AS FOLLOWS:

Section 1. Findings. The “whereas” recitals set forth above are hereby adopted as the City Council’s findings and are incorporated herein by this reference as if fully set forth.

Section 2. Planning Commission Recommendation Adopted. The City Council follows and adopts the recommendation of the Planning Commission to adopt this ordinance

imposing a ban on the cultivation, production, processing and sale of recreational marijuana within the City;

Section 3. No effect on Medical Marijuana. The provisions of this ordinance have no effect on medical marijuana cultivation, production, processing, distributing or collective gardens as regulated under state law, RCW 69.51A.

Section 4. Sections 10.28.010 and 10.28.020 of the Selah Municipal Code amended to prohibit illegal uses.

Section 10.28.010 of the Selah Municipal Codes is amended as follows:

10.28.010 Designations

- (a) Class 1 uses listed in Title 10.28, Table A are permitted subject to review by the administrative official for compliance with Chapter 10.08 and the applicable standards of this title.
- (b) The Class 2 and Class 3 uses listed in Chapter 10.28, Table A, and all matters directly related thereto possess characteristics that warrant review consistent with S.M.C. Title 21, and Chapter 10.08, to ensure:
 - (1) Consistency with the city's comprehensive plan goals, objectives, policies and development criteria;
 - (2) The intent, character and development standards appropriate to the zoning district within which it is to be located;
 - (3) Compatibility with other uses; and
 - (4) Other relevant requirements of state or city law.
- (c) If a proposed use is to be situated on property within the jurisdictional boundaries of the city's shoreline management master program, it shall be subject to the permits and procedural requirements thereof in addition to all applicable standards of this title. If a conflict exists between the standards of the city's shoreline management master program and this title, the more restrictive provisions shall apply.
- (d) **Illegal uses are not permitted under any classification within the City of Selah. See section 10.28.020 of this Chapter.**

Section 10.28.020 of the Selah Municipal Code is amended as follows:

10.28.020 Land use table.

(a) Chapter 10.28, Table A, lists those uses which may be permitted through Class I, II or III review in the various zoning districts defined in this title. Uses not listed in Chapter 10.28, Table A, are not permitted uses. Proposed uses not listed in Chapter 10.28, Table A, may be considered as a similar use in accordance with Section 10.28.030 Similar Uses. In addition to Chapter 10.28, Table A, reference to the individual zoning districts and, where indicated, the regulatory notes contained in Section 10.28.040 and definitions in Title 10, Appendix A, is necessary in order to determine if any specific requirements apply to the listed use.

(b) Land uses not specifically permitted in Table A are not permitted uses within any zoning district within the City of Selah unless authorized through the similar use process set forth in this Chapter.

(c) Illegal Uses Prohibited within the City.

(1) General. Uses that are deemed illegal under local, state, or federal law are prohibited and not permitted within any zoning district within the City of Selah.

(2) Recreational Cannabis/Marijuana cultivation, production, processing, and retailing. The cultivation, production, processing and retail sale and retail outlets for the sale of cannabis/marijuana (all as defined under I-502, as may be codified in the Revised Code of Washington and as used in the implementing regulations in Chapter 314-55 of the Washington Administrative Code) are prohibited and not permitted within any zoning district within the City of Selah.

Section 5. City Council to Reconsider this Ordinance. The City Council shall reconsider this ordinance at such time as the concerns relating to banking are resolved. The ability of persons or entities at every level of the process (from cultivation, production, and processing to retailing) to utilize banking institution in such a manner that the monetary proceeds generated from such establishments can be deposited safely into recognized and secure banking institutions must be resolved prior to City Council reconsideration due to the safety concerns identified in the findings herein.

Section 6. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 7. Effective Date. This ordinance shall be in full force and effect 5 days after its passage, approval, and publication as provided by law.

Section 9. Moratoria Lifted. Any moratorium previously adopted concerning the subject matters of this Ordinance (recreational and medical marijuana) are hereby lifted and terminated effective the same date on which this Ordinance takes effect.

ORDAINED this 8th day of July, 2014.

John Gawlik, Mayor

ATTEST:

Dale Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

Robert F. Noe, City Attorney

Ordinance No. _____